

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

MEMORANDUM OF LAW

-v-

S1 13 Cr. 00272 (PGG)

RUBEN ESTRADA,

Defendant  
-----X

MEMORANDUM OF LAW IN SUPPORT OF  
RUBEN ESTRADA'S MOTION TO SUPPRESS STATEMENTS MADE ON OR ABOUT  
AUGUST 29, 2013

INTRODUCTION

Defendant RUBEN ESTRADA respectfully submits this memorandum of law in support of his pre-trial motion to suppress statements as a result of his unlawful interrogation on August 29, 2013.

Specifically Mr. Estrada moves for the suppression and exclusion of any and all statements made to law enforcement officers on or about August 29, 2012, whether oral or written, and whether signed or unsigned, as the fruit of the illegal interrogation of Mr. Estrada by the New York City Police Department (NYPD) in violation of his rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments.

The NYPD violated Mr. Estrada's rights by interrogating him prior to his having an opportunity to consult with his counsel.

ARGUMENT

1. The August 29, 2012 was an unconstitutional violation of Mr. Estrada's Fifth and Fourteenth Amendment Rights to have counsel present during his interrogation.

The police may not interrogate an incarcerated person after he has asserted his Fifth Amendment right to have counsel present during interrogations, *Edwards v. Arizona*, 451 U.S. 477 (1981). If the police attempt to circumvent this rule, by having a party sign a waiver of rights form, that waiver is presumptively invalid. This *Edwards-Miranda* rule is “meant to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights,” *Montejo v. Louisiana*, 566 U.S. 778, 787 (2009), citing *Michigan v. Harvey* 494 U.S. 344, 350 (1990). This “*Edwards* rule... is not offense specific: Once a suspect invokes the *Miranda* right to counsel for interrogation regarding one offense, he may not be reapproached regarding *any* offense unless counsel is present,” *McNeil v. Wisconsin*, 501 U.S. 171, 177 (1991).

When Mr. Estrada was initially arrested in Dryden, New York he asserted his right to have counsel present at his initial appearance before a judge. Two NYPD detectives subsequently went to the Tompkins County Jail with the express purpose of interrogating Mr. Estrada. Detectives Mallarkey and Sullivan, along with Mr. Estrada’s arresting officer on his Tompkins County case, visited Mr. Estrada in jail. They presented him with a waiver form, which he signed.


Mr. Estrada had previously asserted his Fifth Amendment *Edwards-Miranda* right to have counsel present during interrogations, thus protecting himself from being “badgered” by repeated police-initiated interrogations. The waiver of Mr. Estrada’s right to have counsel present during interrogations “cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights... [A]n accused... having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.” *Edwards*

v. *Arizona*, 451 U.S. 477, 484-85 (1981). Here Mr. Estrada initiated no such further communication with the police. Any statements made in the Tompkins County Jail are a fruit of an unlawful interrogation and must be suppressed.

CONCLUSION

For all the foregoing reasons, Mr. Estrada respectfully requests that this court suppress any and all statements made around August 29, 2012, as evidence obtained as a result of an unlawful interrogation, made in violation of Mr. Estrada's Fifth and Fourteenth Amendment rights.

Dated: January 10, 2014  
New York, New York

  
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